



Virginia
Regulatory
Town Hall

Periodic Review and Retention of Existing Regulations Agency Background Document

Agency Name:	15
VAC Chapter Number:	20
Regulation Title:	Regulations for the Control and Supervision of Virginia's Dairy Industry
Action Title:	Periodic Regulatory Review
Date:	September 26, 2000

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to retain an existing regulation.

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

The regulation provides for the supervision, regulation, and control of the production, processing, transportation, storage, disposition, and sale of fluid milk. Provisions establish mechanisms to provide for a constant and available supply of milk to Virginia citizens that is equitably and reasonably priced.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

Section 3.1-430(g) of the Code of Virginia provides the authority for the State Milk Commission to promulgate regulations. This section provides that the Commission is to make, adopt, and enforce all rules, regulations, and orders necessary to carry out the purposes of Chapter 21 Article 2 of the Code and is mandated.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

No public comment was received on 2 VAC 15-20-10 through 2 VAC 15-20-30; 2 VAC 15-20-50 through 2 VAC 15-20-70; 2 VAC 15-20-90; and 2 VAC 15-20-110 through 2 VAC 15-20-130.

A cooperative association of producers made comment on two regulations 2 VAC 15-20-40, sections C and B Producers' License and Base; Establishment, and 2 VAC 15-20-81 Class Prices for Producer's Milk, Time & Method of Payment and Butterfat Testing.

The first concern was that the current base making period of September, October, and November did not accurately reflect a producer's ability to produce milk. The concern was that the current regulation's base making period included two months of hot humid weather and one month of cool weather. As cows traditionally do not produce milk well in hot humid weather the concern was that the base making period should be expanded to include an additional cool weather month to add balance. It was suggested that the month of December be added to the period.

The State Milk Commission does not believe that there is sufficient evidence to warrant an amendment to adjust the long standing traditional base making period without further study. The current established three month period has worked efficiently and effectively in establishing the production capability of producers toward the estimated production requirements to meet the demand for fluid milk in terms of sales. The Commission will establish an ad hoc committee comprised of other cooperative associations and other interested parties to study and review this concern to determine if an amendment is warranted.

The second concern was that the date of final payment made to producers or cooperative associations of producers by general distributors creates a cash flow problem in their ability to pay their membership and should be amended to an earlier date to comport with Federal Order requirements.

The State Milk Commission does not believe that that there is sufficient evidence to warrant an amendment to the final payment date without further study of the issue. The Commission will

establish an ad hoc committee comprised of other cooperative associations, processors and other interested parties to study and review this concern to determine if an amendment is warranted.

A large retail grocery chain operating in Virginia recommended that the retail below cost selling prohibition in 2 VAC 15-20-100 Rules of Practice be modified to enable retailers to sell fluid milk products at less than cost in promotional specials. They contend that allowing this practice will increase sales volume and thus the return to dairy farmers.

The State Milk Commission does not believe that there is sufficient evidence to warrant an amend the regulations to allow retail below cost selling without significant futher study. The primary purpose to this aspect of the regulations is not to restrict the business activities of retail grocery chains. Rather, it is to provide for market stability through the maintenance of retail prices at competitive levels at or above costs. Market stability may be defined as circumstances which exist which will not lead to retail or wholesale negative pressure on producer prices which will influence milk production in a downward direction. The Commission has not had this matter as an issue since 1974 and deems it a matter that should be reviewed and studied in some detail. Therefore, the Commission will conduct an informal fact finding hearing and solicit comment on the matter to determine if futher study and review is warranted. This hearing and comment request will be called to solicit input from producers, co-operative associations, retailers, processors, and other interested parties.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. Please assess the regulation's impact on the institution of the family and family stability. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The principle goal of this regulation is to provide for the control necessary to provide a constant and available supply of milk to Virginia citizens at equitable and reasonable prices. This may be measured by the supply of milk available to meet the sales demand at producer prices competitive with adjacent markets. The regulation has afforded the production of milk in sufficient quantities to satisfy sales demand, and at prices which are competitive with adjacent markets. The regulation is deemed to be essential to the public health and welfare of Virginia citizens through the provision of a vital food source. The regulation impacts the institution of the family through the maintenance of an adequate and constant supply of a vital food source.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

Specific alternatives for achieving were not considered for regulations 2 VAC 15-20-10 through 2 VAC 15-20-30; 2 VAC 15-20-50 through 2 VAC 15-20-70; 2 VAC 15-20-90; and 2 VAC 15-20-110 through 2 VAC 15-20-130 due to public comment being received during the regulatory process or at any other time. The recommendations for amendment to the other regulations received were not considered because the Commission did not have sufficient information to fully appreciate the impact of these comments. Further study and review of these proposals was deemed essential before any consideration of regulatory action. The Commission believes that the existing regulations are the least burdensome method of achieving the purpose of the regulation as the regulated industry and consumers have significant input into their promulgation.

Recommendation

Please state that the agency is recommending that the regulation should stay in effect without change.

No public comment was received on 2 VAC 15-20-10 through 2 VAC 15-20-30; 2 VAC 15-20-50 through 2 VAC 15-20-70; 2 VAC 15-20-90; and 2 VAC 15-20-110 through 2 VAC 15-20-130 during the regulatory review process. The Commission assumes the following in the absence or any public comment or evidence to the contrary on the aforementioned regulations:

1. There is no need to develop, amend, or repeal these regulations.
2. There is an essential need for the regulations.
3. The regulations do not interfere in public enterprise or life.
4. There is no less burdensome and intrusive alternatives to the regulation.
5. The regulations meet the specific goals that they are intended to achieve.
6. The regulations are clearly written and easily understandable.
7. The regulations are efficient, effective and their cost of compliance is not burdensome.

Regulations 2 VAC 15-20-40, 2 VAC 15-20-81 and 2 VAC 15-20-100 will be retained in their present form due to the lack of compelling evidence to the contrary. The Commission, however believes that these issues deserve further study and will pursue the establishment of ad hoc committees comprised of industry members and other interested parties to study 2 VAC 15-20-40 and 2 VAC 15-20-81. 2 VAC 15-20-100 will be studied through an informal hearing process.

Family Impact Statement

Please provide an analysis of the regulation's impact on the institution of the family and family stability including the extent to which it: 1) strengthens or erodes the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourages or discourages economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthens or erodes the marital commitment; and 4) increases or decreases disposable family income.

This regulation has direct impact on the institution of the family farm and family family stability. It does not effect the authority of parents in the education, nuturing, and supervision of children. It does impact the economic stability of the family farm. It does not effect economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents of non farm family. It does effect disposable farm family income. It does not effect disposable non farm family income. The regulation only impacts non farm families to the extent of the availablity of a vital healthy food source at reasonable and equitability prices.